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Arizona Corporation Commission

**DOCKETED**

DEC 16 2010

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Attorneys for Respondents

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

KRISTIN K. MAYES, Chairman

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

In the matter of:

DOCKET NO. S-20768A-10-0463

JOSEPH MACK and Helen Marie Mack,  
husband and wife, dba Secure Retirement  
Solutions,

MACK FINANCIAL GROUP, LLC, an  
Arizona limited liability company, and

DARIN WHITTINGTON, CRD #2569037,  
and Gina Whittington, husband and wife,

Respondents.

**ANSWER TO NOTICE OF  
OPPORTUNITY FOR HEARING**

Pursuant to A.A.C. R14-4-305, respondent Darin Whittington and Respondent Spouse Gina Whittington ("Respondents") for their answer to the Arizona Corporation Commission's (the "Commission") Notice of Opportunity for Hearing (the "Notice"), admit, deny and allege as follows:

1. The allegations contained in paragraph 1 constitute legal conclusions to which no response is required. To the extent the allegations contained in paragraph 1 constitute a factual allegation, Respondents deny the same.

2. Respondents are without knowledge or information sufficient to form a belief as to

1 the truth or the falsity of the Commission's allegations in paragraphs 2-3 and therefore deny the  
2 same.

3 3. Respondents admit the allegations contained in paragraph 4 of the Notice.

4 4. The allegations contained in paragraph 5 of the Notice constitute legal conclusions  
5 and instructions for reading the Notice to which no response is required. To the extent the  
6 allegations contained in paragraph 5 of the Notice constitute factual allegations, Respondents  
7 deny the same.

8 5. In responding to the allegations contained in paragraph 6 of the Notice,  
9 Respondents admit that Gina Whittington was at all relevant times the spouse of Darin  
10 Whittington. Respondents are without knowledge or information sufficient to form a belief as to  
11 the truth or the falsity of the Commission's remaining allegations in paragraph 6 and therefore  
12 deny the same. To the extent the allegations contained in paragraph 6 of the Notice constitute  
13 legal conclusions and instructions for reading the Notice, no response is required.

14 6. Respondents deny the allegations contained in paragraph 7 of the Notice.

15 7. Respondents admit the allegations contained in paragraphs 8 of the Notice.

16 8. In responding to the allegations contained in paragraph 9 of the Notice,  
17 Respondents affirmatively allege that Darin Whittington hired a third-party advertising company  
18 to prepare and mail invitations to insurance and annuity workshops and to select recipients for  
19 such mailings. Respondents affirmatively allege that workshops were usually held at  
20 restaurants. Respondents affirmatively allege that topic of workshops conducted by Darin  
21 Whittington was insurance and annuity products unrelated to Oxford or the Forex Investment (as  
22 those terms are defined in paragraph 10 of the Notice). Respondents are without knowledge or  
23 information sufficient to form a belief as to the truth or the falsity of the Commission's  
24 remaining allegations in paragraph 9 and therefore deny the same.

25 9. Respondents deny the allegations contained in paragraph 10 of the Notice.  
26 Respondents affirmatively allege that Respondents never presented the Forex Investment to  
27 attendees at an insurance and annuity workshop. Respondents further affirmatively allege that if  
28 the Forex Investment was discussed at an insurance and annuity workshop, it was done so

1 because workshop attendees asked about alternatives to annuities and insurance products.  
2 Respondents further affirmatively allege that in response to workshop attendee inquiries,  
3 Respondents informed attendees that they knew of the Forex Investment generally, but were not  
4 familiar enough with its specifics to speak about it publicly and referred interested attendees to  
5 other persons for more information.

6 10. Respondents deny the allegations contained in paragraphs 11-12 of the Notice. In  
7 responding to the allegations contained in paragraphs 11-12 of the Notice, Respondents  
8 affirmatively allege that when workshop attendees or pre-existing clients asked about fixed-  
9 income alternatives or the Forex Investment specifically, Respondents referred them to another  
10 person for more information. Respondents affirmatively allege that Respondents did not draft,  
11 consult in drafting, prepare or assist in preparing any documents describing or relating to Oxford  
12 or the Forex Investment.

13 11. Respondents are without knowledge or information sufficient to form a belief as to  
14 the truth or the falsity of the Commission's allegations in paragraph 13 and therefore deny the  
15 same.

16 12. Respondents deny the allegations contained in paragraphs 14 of the Notice.

17 13. Respondents deny the allegations contained in paragraphs 15 of the Notice.

18 14. Respondents deny the allegations contained in paragraphs 16 of the Notice. In  
19 responding to the allegations contained in paragraph 16 of the Notice pertaining to Joe Mack,  
20 Respondents are without knowledge or information sufficient to form a belief as to the truth or  
21 the falsity of the Commission's allegations and therefore deny the same.

22 15. In responding to the allegations contained in paragraph 17 of the Notice,  
23 Respondents affirmatively allege that when workshop attendees or pre-existing clients asked  
24 about fixed-income alternatives, Respondents generally informed them about different options,  
25 most of which were unrelated to Oxford, and referred some workshop attendees and pre-existing  
26 clients to another person for information about the Forex Investment. Respondents deny the  
27 remaining allegations contained in paragraph 17 of the Notice.

28 16. Respondents are without knowledge or information sufficient to form a belief as to

1 the truth or the falsity of the Commission's allegations in paragraph 18 and therefore deny the  
2 same. Respondents affirmatively allege that Respondents are not a party to, or otherwise named  
3 in, any management agreement or customer trading agreement and, upon information and belief,  
4 such management and customer trading agreements are between Forex Investors and Oxford  
5 directly.

6 17. Respondents are without knowledge or information sufficient to form a belief as to  
7 the truth or the falsity of the Commission's allegations in paragraph 19 and therefore deny the  
8 same.

9 18. Respondents are without knowledge or information sufficient to form a belief as to  
10 the truth or the falsity of the Commission's allegations in paragraph 20 and therefore deny the  
11 same. Respondents affirmatively allege that Darin Whittington received three payments of  
12 finder's fees directly from Oxford, one in November 2008, one in December 2008 and one in  
13 January 2009, after which Darin Whittington informed Oxford that he did not wish to receive  
14 any further finder's fees.

15 19. In responding to the allegations contained in paragraph 21 of the Notice,  
16 Respondents affirmatively allege that upon information and belief, the finder's fees paid by  
17 Oxford were approximately 2-3 percent of the amount invested. Respondents deny the  
18 remaining allegations contained in paragraph 21 of the Notice.

19 20. Respondents are without knowledge or information sufficient to form a belief as to  
20 the truth or the falsity of the Commission's allegations in paragraph 22 and therefore deny the  
21 same.

22 21. Respondents deny the allegations contained in paragraph 23 of the Notice.

23 22. Respondents are without knowledge or information sufficient to form a belief as to  
24 the truth or the falsity of the Commission's allegations in paragraph 24 and therefore deny the  
25 same.

26 23. Respondents admit the allegations contained in paragraphs 25-26.

27 24. In responding to the allegations contained in paragraph 27 of the Notice,  
28 Respondents affirmatively allege that in 2008 and 2009 Darin Whittington referred individuals

1 interested in the Forex Investment and Oxford to other persons for more information.  
2 Respondents are without knowledge or information sufficient to form a belief as to the truth or  
3 the falsity of the Commission's remaining allegations in paragraph 27 and therefore deny the  
4 same. To the extent the allegations contained in paragraph 27 constitute legal conclusions as  
5 opposed to factual assertions, no response is required.

6 25. Respondents deny the allegations contained in paragraph 28 of the Notice.

7 26. Respondents are without knowledge or information sufficient to form a belief as to  
8 the truth or the falsity of the Commission's allegations in paragraph 29 and therefore deny the  
9 same.

10 27. The allegations contained in paragraph 30 of the Notice constitute legal  
11 conclusions to which no response is required. To the extent the allegations contained in  
12 paragraph 30 of the Notice constitute factual allegations, Respondents deny the same.

13 28. Respondents are without knowledge or information sufficient to form a belief as to  
14 the truth or the falsity of the Commission's allegations in paragraph 31 and therefore deny the  
15 same.

16 29. Respondents deny the allegations contained in paragraph 32 of the Notice.

17 30. The allegations contained in paragraph 33 of the Notice constitute legal  
18 conclusions to which no response is required. To the extent the allegations contained in  
19 paragraph 33 of the Notice constitute factual allegations, Respondents deny the same.

20 31. Respondents deny the allegations contained in paragraph 34 of the Notice. To the  
21 extent the allegations contained in paragraph 34 constitute legal conclusions as opposed to  
22 factual assertions, no response is required.

23 32. Respondents deny the allegations contained in paragraph 35 of the Notice. To the  
24 extent the allegations contained in paragraph 35 constitute legal conclusions as opposed to  
25 factual assertions, no response is required.

26 **AFFIRMATIVE DEFENSES**

27 33. Respondents affirmatively allege that that they did not cause any of the losses or  
28 damages, if any, complained of by investors in the Forex Investment. Investors losses or

1 damages, if any, were caused by the acts or omissions of Trevor Cook a Minnesota resident, Bo  
2 Beckman, a Minnesota resident, Oxford Global Advisors, a Minnesota business entity, Oxford  
3 Private Client Group, a Minnesota business entity, and the officers, directors, agents,  
4 subsidiaries and/or affiliates of such persons. (collectively, the "Oxford Parties").

5 34. Respondents affirmatively allege that the Oxford Parties are necessary and  
6 indispensable parties to this proceeding. The failure to include the Oxford Parties as defendants  
7 prevents the Commission from according complete relief among those already parties. The  
8 failure to include the Oxford Parties leaves all Respondents named in the Notice subject to a  
9 substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of  
10 the claimed interest. Respondents reserve the right to move for the dismissal of this action for  
11 failure to join necessary and indispensable parties.

12 35. Respondents affirmatively allege that they did not sell the Forex Investment or  
13 offer it for sale to any investors, workshop attendees or pre-existing clients and if the Forex  
14 Investment was sold to such persons, it was sold exclusively by one or more of the Oxford  
15 Parties and not Respondents.

16 36. Respondents affirmatively allege that the "Forex investment" referenced in  
17 paragraph 10 of the Notice is not a security under Arizona law.

18 37. Respondents affirmatively allege that if any security was sold by the Oxford  
19 parties, such security is exempt from registration under the laws of the State of Arizona and of  
20 the United States.

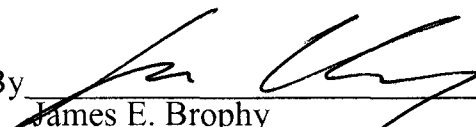
21 38. Respondents affirmatively allege that this action is barred by the applicable statute  
22 of limitations.

23 39. Respondents reserve the right to raise any affirmative defenses that are applicable  
24 and may become apparent during the discovery phase of this matter.

25 40. Respondents hereby renew their request to a hearing on the allegations contained  
26 in the Notice separate and apart from other Respondents named in this matter.

1 DATED this 16<sup>th</sup> day of December, 2010.

2 RYLEY CARLOCK & APPLEWHITE

3  
4 By   
5 James E. Brophy  
6 William B. McManus  
7 Kevin R. Heaphy  
8 One North Central Avenue, Suite 1200  
9 Phoenix, Arizona 85004-4417  
10 Attorneys for Respondents

11 **ORIGINAL** of the foregoing filed  
12 this 16<sup>th</sup> day of December, 2010 to:

13 Arizona Corporation Commission  
14 Docket Control  
15 1200 W. Washington  
16 Phoenix, Arizona 85007

17 **COPY** of the foregoing *via* US Mail  
18 this 16<sup>th</sup> day of December, 2010 to:

19 Wendy Coy  
20 Arizona Corporation Commission  
21 1300 W. Washington, 3<sup>rd</sup> Floor  
22 Phoenix, Arizona 85007

23 By 